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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,954	07/22/2002	Stephen Arkinstall	ARKINSTALL=1	4903
1444 7590 05/30/2007 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER COLEMAN, BRENDA LIBBY	
			ART UNIT	PAPER NUMBER
			1624	
			MAIL DATE	DELIVERY MODE
			05/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/070,954

Applicant(s)

ARKINSTALL ET AL.

Examiner

Brenda L. Coleman

Art Unit

1624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 1-3,5-12,20-22,27-31,35 and 36.  
Claim(s) withdrawn from consideration: NONE.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Brenda L. Coleman  
Primary Examiner  
Art Unit: 1624

**ADVISORY ACTION**

Claims 1-3, 5-12, 20-22, 27-31, 35 and 36 are pending in the application.

This action is in response to applicant's amendment filed May 17, 2007. Claims 1-3, 5, 9, 10 and 11 have been amended and claim 4 has been canceled.

The period for reply continues to run FOUR MONTHS from the date of the final rejection. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 or a request for a continued examination (RCE) in compliance with 37 CFR 1.114 must be timely filed to avoid abandonment of this application.

The amendment filed May 17, 2007 under 37 CFR 1.116 in reply to the final rejection has been entered, but is not deemed to place the application in condition for allowance. For purposes of appeal, the status of the claims is as follows:

Allowed claim(s): NONE

Rejected claim(s): 1-3, 5-12, 20-22, 27-31, 35 and 36

Claim(s) objected to: NONE

***Response to Amendment***

Applicant's arguments filed May 17, 2007 have been fully considered with the following effect:

1. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 112, first paragraph rejection of claims 2, 3, 29, 30 and 31 labeled paragraph 1) maintained in the last office action, which is hereby **withdrawn**.

2. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 112, second paragraph rejection of claims 2, 3, 29, 30 and 31, labeled paragraph 2aa), maintained in the last office action, which is hereby **withdrawn**.

3. With regards to the provisional obviousness-type double patenting rejection of claims 1-3 and 5-41 labeled paragraph 4 over copending Application No. 10/381,200 of the last office action, the applicants requested that this rejection be held in abeyance at this time.

Claims 1-3, 5-12, 20-22, 27-31, 35 and 36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No, 10/381,200, for reasons of record and stated above.

4. With regards to the provisional obviousness-type double patenting rejection of claims 1-3 and 5-41 labeled paragraph 5 over copending Application No. 10/381,665 of the last office action, the applicants requested that this rejection be held in abeyance at this time.

Claims 1-3, 5-12, 20-22, 27-31, 35 and 36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable

over claims 1-16 of copending Application No, 10/381,665, for reasons of record and stated above.

5. The applicant's amendment to the specification is sufficient to overcome the objection to the specification labeled paragraph 7) maintained in the last office action, which is hereby **withdrawn**.

6. With regards to the 35 USC § 112, second paragraph rejection of claim 36, labeled paragraph 11h) maintained in the last office action, the applicant's amendments and arguments have been fully considered, however they were not found persuasive.

h) The applicants' stated that claim 9 has been amended to recite that L<sup>1</sup> is a triazole ring, which is fused with an unsubstituted or substituted aryl or heteroaryl. However, this is not so. The definition of L<sup>1</sup> in claim 10 never embraces the additional fusion of an unsubstituted or substituted aryl ring.

Claim 36 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons of record and stated above.

7. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 102, anticipation rejection of claims 1-3, 20, 27, 29 and 31, labeled paragraph 12) maintained in the last office action, which is hereby **withdrawn**.

8. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 102, anticipation rejection of claims 1-3 and 20, labeled paragraph 13) maintained in the last office action, which is hereby **withdrawn**.

9. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 102, anticipation rejection of claims 1-3, 5, 6 and 20, labeled paragraph 14) maintained in the last office action, which is hereby **withdrawn**.

10. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 102, anticipation rejection of claims 1, 3, 5, 6, 8, 9, 27 and 28, labeled paragraph 15) maintained in the last office action, which is hereby **withdrawn**.

11. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 102, anticipation rejection of claims 1-3, 20 and 27-31, labeled paragraph 16) maintained in the last office action, which is hereby **withdrawn**.

12. The applicant's amendments and arguments are sufficient to overcome the 35 USC § 112, second paragraph rejection of claims 1-3, 5-12, 20-22, 27-31, 35 and 36, labeled paragraph 18a), b), c), d), e), f), g) and h) in the last office action, which are hereby **withdrawn**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brenda L. Coleman  
Primary Examiner Art Unit 1624  
Tuesday, May 29, 2007